IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

Crl.MC.No. 1255 of 2007()

AGAINST THE ORDER DATED 27/03/2007 IN CMP. 1519 /2007 IN CC.463/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KATTAPPANA

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PETITIONER: ACCUSED:

SAJI @ THOMAS, S/O. ITTIVIRAH,
AGED 33 YEARS, MARANGATTIL HOUSE, VAZHAVARA KARA,
NIRMALA CITY, KATTAPPANA, IDUKKI DISTRICT.

BY ADV. SRI.ALEXANDER JOSEPH

RESPONDENTS: COMPLAINANT:

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1. STATE OF KERALA,
REP. BY THE DIRECTOR GENERAL OF PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE, KATTAPPANA.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1255 of 2007

Dated this the 29th day of May 2007

O R D E R

The petitioner faces indictment in a prosecution under Sections 457 and 380 I.P.C. Evidence has been recorded. PW2, an autorickshaw driver, who allegedly had seen the accused at the place of commission of the offence was examined and cross-examined.

2. The learned counsel for the petitioner submits that PW2's evidence is the sole piece of evidence available in this case and when that witness was examined, senior counsel was laid up and he could not appear. Cross-examination was conducted by a junior counsel. Relevant aspects has not been probed sufficiently and satisfactorily. The petitioner wants to set up a case that PW2 is inimical to the petitioner because PW2 is an accused in a sexual harassment case in which the petitioner has been cited as a witness. These aspects were not gone into thoroughly and it is, in these circumstances, prayed that if not as a matter of right or an act of indulgence, such a further opportunity may be given to the petitioner to further cross-examine PW2 considering the nature and gravity of the offence

and the fact that the senior counsel could not be personally present to do the cross-examination on behalf of the petitioner. A lenient view may be taken and subject to any appropriate condition that this court may choose to impose, the petitioner may be granted a further opportunity to cross-examine PW2.

3. I am satisfied that in the peculiar facts and circumstances of this case, such an indulgent further opportunity can be granted to the petitioner subject, of course, to appropriate condition. PW2 is being recalled for examination for no fault of his and I am satisfied that he has to be adequately compensated.

4. In the result, this petition is allowed. The petitioner should be given an opportunity to cross-examine PW2 (if available after he is recalled) on condition that the petitioner deposits cost of Rs.500/- (Rupees five hundred only) payable to PW2. Such deposit must be made within a period of ten days from this date.

5. Hand over copy of this order to the learned counsel for the petitioner for immediate production before the learned Magistrate.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007